



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159782

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 04, 2014. The record held open until September 26, 2014 to allow petitioner time to submit information about his medications and their reactions on a drug test, some of which was received.

The issue for determination is whether the agency correctly discontinued petitioner's FS effective August 1, 2014 and entered a 12 month sanction because he is a drug felon and failed a drug test.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Kathy Jones, ESS  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner applied for FS in June 2014 and disclosed that he was a drug felon. As such, the agency required he submit to a drug test for FS purposes.

3. Petitioner submitted to the drug test on July 14, 2014, and the agency received those results on July 22, 2014. See Exhibit 1. He tested positive for benzodiazepines, opiates and oxycodone/oxymorphone.
4. On July 23, 2014 the agency issued a notice to petitioner stating that it was imposing a 12-month sanction on him for failing the drug test effective August 1, 2014. See Exhibit 4.

### **DISCUSSION**

For FS eligibility purposes, a drug felon is a person who is convicted of a felony in a state or federal court involving the possession, use or distribution of a controlled substance within the last 5 years. See *FS Handbook (FSH)* §3.19.1 and 7 CFR §273.11(m). Convicted drug felons must have a negative drug test result to become or remain eligible for FS. See *FSH* §§3.19.1 and 3.19.1.2. According to policy:

Applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken. If the individual passes this test, s/he remains eligible. If the applicant refuses to take a drug test, s/he will be denied indefinitely until s/he agrees to take a drug test.

If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month.

*FSH* §3.19.1.1 (emphasis added).

In this case, the petitioner does not dispute that he is a convicted drug felon or that he failed the test. Rather, he argues that he had prescriptions which accounted for the positive results for benzodiazepines, opiates and oxycodone/oxymorphone. At the hearing, petitioner presented pharmacy printouts showing his prescriptions. He was also instructed to provide any information regarding how, in particular, his prescriptions would result in a positive result for morphine. There is no evidence in this record to show that his prescriptions would create a positive morphine result and this administrative law judge is unaware of any such prescription.

I do not have any power to change the result based on any fairness argument, as it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I add, for petitioner's benefit that in order to regain eligibility for FS after 12 months he must reapply and submit to another drug test. If the second drug test is negative, he may be eligible for FS as of the first of the month following the month in which he agrees to take the test. If the second test results are positive, he is ineligible for the FS program for an additional 12 months. As with other sanctions that end, the individual must re-request FS. He will not automatically be eligible when the sanction period ends. See *FSH* §3.19.1.3.

Having no evidence to the contrary, I must find the agency acted correctly here. If the petitioner develops the evidence regarding the morphine result, he can always provide it along with a rehearing request as discussed below.

### **CONCLUSIONS OF LAW**

The agency correctly discontinued petitioner's FS effective August 1, 2014 and entered a 12 month sanction because he is a drug felon and failed a drug test.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

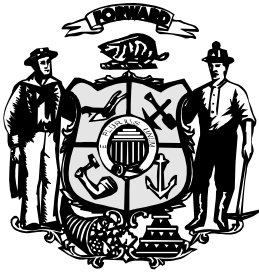
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 30th day of September, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 30, 2014.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability